

Notices of Supplemental Proposed Rulemaking

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides that prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office. The Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 411001 et seq.) publication of the Notice of Supplemental Proposed Rulemaking in the *Register* before holding any oral proceedings (A.R.S. § 411022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

1. **Register citation and date for the original Notice of Proposed Rulemaking:**
2 A.A.R. 3272, July 5, 1996
2.

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R12-4-422	Repeal
R12-4-422	New Section
3. **The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statute: A.R.S. § 17-238
4. **The name and address of agency personnel with whom persons may communicate regarding this rule:**
Name: Susan L. Alandar
Address: Game and Fish Department
2221 West Greenway Road DOAS
Phoenix, Arizona
Telephone: (602) 789-3289
Fax: (602) 789-3299
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
R12-4-422. Falconer License. To be repealed and replaced; see below.

R12-4-422. Falconers; Licensing and Requirements. In response to a petition from the Arizona Falconers' Association, the Commission proposes to amend R12-4-422 to preclude issuance of a citation to falconers in the event of inadvertent kill of nontarget wildlife by a raptor. The rule is being repealed and adopted in more understandable style and format, and provision is also being added to allow capture of raptors by nonresident falconers.
6. **An explanation of the substantial change which resulted in this supplemental notice:**
The U.S. Fish and Wildlife Service has pointed out the following inconsistencies between the rule and the federal rules governing falconry:
 1. Subsection (H)(1) uses the term "raptor species," whereas federal rules say "raptors." Federal rules require that every raptor in a facility be separated from each other. It is proposed to change the state rule to conform, but this will mean that falconers would have to provide additional partitioning or tethers, as all raptors would have to be separated even if they are of the same species.
 2. Subsection (J)(6) of the proposed rule allows licensees 14 days before presenting captured raptors to the Department for banding. It is proposed to reduce this period to 5 days for Harris hawks, Gyrfalcons, and Peregrine falcons. For these species, the federal rule requires reporting and banding within 5 days.
 3. Subsection (P) of the proposed rule allows a licensee to transfer a raptor to another licensee for temporary care for 30 days; Department approval is required for any extension of that time. It is proposed to change this to be consistent with federal rule, which does not allow any exception for a period exceeding 30 days.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.

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8. The preliminary summary of the economic, small business, and consumer impact:

1. Commonly, falconers do not keep untethered birds together. Therefore it is not expected that more than 4 or 5 falconers would be affected. Cost to comply with this change would be \$0-\$50 per falconer, dependent upon materials used. There would be no cost or impact to the Department.
2. The change in banding requirements will not create additional workload on the Department but will require some rearranging of existing schedules within regional offices where this service is conducted. It is estimated that about 20 of these raptors are banded each year, and it takes about 15-30 minutes per raptor to accomplish this. Falconers will feel the burden of meeting this more restrictive schedule but it should not incur additional cost to them.
3. Removing provision for the Department to give approval for temporary care will reduce workload on the Department but impose an inconvenience on a falconer who is unable to care for a raptor after the 30 days. That falconer will need to find a different licensee to transfer to temporarily, or make a permanent transfer.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the preliminary economic, small business and consumer impact statement.

Name: Bruce Taubert, Assistant Director
 Address: Game and Fish Department
 2221 West Greenway Road WMHQ
 Phoenix, Arizona 85023
 Telephone: (602) 789-3301
 Fax: (602) 789-3920

10. The time, place and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Date: January 24, 1997
 Time: 1:30 p.m.
 Location: Ben Avery Shooting Facility
 4044 West Black Canyon Boulevard
 Phoenix, Arizona
 Nature: This public hearing is to discuss the proposed changes to the rule.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
 None.

12. Incorporations by reference and their location in the rules:
 None.

13. The full text of the changes follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 4. LIVE WILDLIFE

R12-4-422. Falconers; Licensing and Requirements

ARTICLE 4. LIVE WILDLIFE

R12-4-422. Falconers: Licensing and Requirements

A. For the purposes of this Section, the following definitions apply:

1. "Eyas" means a flightless raptor that is found in the nest and is dependent upon a parent bird for food.
2. "Falconry" means the sport of taking quarry by means of a trained raptor.
3. "Passage" means a raptor in immature plumage, capable of flight and able to hunt and obtain its own food, and which is less than 1 year of age.
4. "Raptor" means a live migratory bird of the species great horned owl, *Bubo virginianus*, of the family Strigidae; any of the family Falconidae; and any of the family Accipitridae, other than the bald eagle, *Haliaeetus leuco-*

cephalus; which under the provisions of this rule may be used in the practice of falconry.

5. "Sponsor" means a licensed Class II or Class III falconer who agrees to supervise and instruct no more than 3 Class I falconers in the practice of falconry at any 1 time.
- B. The Department shall inspect the raptor housing facilities and equipment of any applicant not previously licensed in Arizona, and determine that the facilities and equipment meet the requirements of this rule, before issuing a license to the applicant. A license is valid from the date it is issued by the Department until the 3rd December from the date of issue. The Department shall issue the falconers licenses to applicants complying with application procedures in this rule and meeting the following criteria:
 1. An applicant for a Class I Apprentice Falconer License:
 - a. Must be 14 years of age or older;
 - b. Must have a sponsor at the time of application, and shall provide to the Department a written commitment from the sponsor to continue sponsoring the applicant for the 1st 2 years as a licensed falconer;
 - c. Shall answer correctly at least 80% of the questions

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on an examination supervised and administered by the Department and approved by the U.S. Fish and Wildlife Service, relating to basic biology, care, and handling of raptors, and other subject matter related to falconry.

2. An applicant for a Class II General Falconer License:
 - a. Must be 18 years of age or older;
 - b. Must have at least 2 years of falconry experience at the Class I level, computed from the date that the applicant obtained the 1st Class I Apprentice Falconer License;
 - c. Shall provide to the Department a letter of recommendation from a falconers' association affiliated with the North American Falconers Association, stating that the applicant is qualified and eligible to become a Class II falconer.
3. An applicant for a Class III Master Falconer License:
 - a. Must be 23 years of age or older.
 - b. Must have at least 5 years of falconry experience at the Class II level, computed from the date that the applicant obtained the 1st Class II General Falconer License.
- C. Any new resident shall make application for an Arizona falconer license within 30 days of importing any raptor possessed by the authority of a falconer license issued by another lawful jurisdiction. Any applicant for an Arizona falconers license shall present any raptor in possession for inspection at the time of application.
- D. Applicants shall provide the following information on a form available from the Department, and shall sign the completed form:
 1. Name, address, and telephone number;
 2. Physical description and date of birth;
 3. Valid Arizona hunting license number and identification number;
 4. The falconer license classification desired. Class I applicants shall supply their sponsor's name and address on the form;
 5. The number of raptors the applicant possesses at the time of application and the species; age, if known; sex, if known; band numbers; date of acquisition; and source of each.
- E. A Class I licensee may possess only 1 raptor at a time; the raptor may be lawfully obtained in another state. The Class I licensee shall obtain all birds from the wild and shall not obtain more than 1 raptor for replacement purposes during any calendar year. A Class I licensee shall not take an eyas bird.
- F. A Class II licensee shall not possess more than 2 raptors at a time. The raptors may be any species except a golden eagle or a species listed as endangered or threatened. A Class II licensee shall not obtain more than 2 raptors during any calendar year.
- G. A Class III licensee shall not possess more than 3 raptors at a time. The raptors may be of any species authorized by the U.S. Fish and Wildlife Service. A Class III licensee shall not obtain more than 2 raptors taken from the wild during any calendar year, but may obtain raptors from other lawful sources within the 3-raptor possession limit.
- H. All falconer applicants and licensees shall provide either an indoor or outdoor housing facility meeting the following standards, designed to protect the raptor from the environment, predators, and undue disturbances:
 1. Indoor facilities must be large enough to allow easy access for caring for the raptors housed in the facility. The area for each bird must be large enough to allow each raptor to fully extend its wings, with perches textured to

prevent foot problems. The facility must have at least 1 window, protected on the inside by vertical bars, spaced narrower than the width of the raptor's body, and a door that can be easily closed and secured. The floor of the facility must be well drained and designed to permit easy cleaning. The licensee shall not keep more than 1 raptor species in the same facility unless each raptor species is tethered or separated by partitions.

2. Outdoor facilities must be fenced and covered with netting or wire, or roofed to protect the raptors from disturbance and attack by predators, except that perches more than 6-1/2 feet high need not be covered or roofed. The enclosed area must be large enough to insure the raptors cannot strike the fence when flying from the perch. The licensee shall provide protection from the sun, wind, and inclement weather for each raptor and perches which are textured to prevent foot problems.
- I. All falconer applicants and licensees shall possess and use the following equipment:
 1. At least 1 pair of jesses constructed of pliable, high-quality leather or synthetic material, containing bracelets to affix to each leg of a raptor, with a grommet through which a strap passes freely so that an escaped raptor can pull the strap out of the bracelet. The licensee shall use this equipment when any raptor is flown free. Licensees may use traditional 1-piece jesses on raptors only when not being flown;
 2. At least 1 flexible, weather-resistant leash and 1 strong swivel designed for falconry;
 3. At least 1 container, 2 to 6 inches deep and wider than the length of the raptor, for drinking and bathing for each raptor;
 4. At least 1 raptor perch for each raptor;
 5. A reliable scale or balance suitable for weighing the raptor or raptors, held and graduated to increments of not more than 1/2 ounce, or 15 grams.
- J. A Class I, II, or III falconer licensed in Arizona or a state recognized by the U.S. Fish and Wildlife Service as meeting federal falconry standards may capture raptors for the purpose of falconry only, in accordance with the Commission order establishing raptor capture seasons for licensed falconers. When there is reason to believe that a species of raptors may be overharvested by nonresidents if the number of permits is not limited, the Commission shall specify the number of permits available to nonresidents in the Commission order.
 1. During capture, the licensee shall have in possession the falconer license, Arizona hunting license, and any required hunt permit-tag issued to that licensee.
 2. The licensee shall immediately release any nontarget raptor inadvertently captured. If the raptor is wearing a band or other marker the licensee shall report the capture and release of the marked bird to the Department, along with any identifying number and related information.
 3. The licensee shall not remove any eyas raptor from any nest unless 1 or more live eyas raptors remain in the nest after the removal.
 4. The licensee may capture raptors only with traps or bird nets which are unlikely to cause injury to the raptor, and shall not use mist nets, steel-jawed traps, or stupefying substances.
 5. The licensee shall ensure that all traps or nets in use are in constant attendance, and that any raptor trap or net being used is plainly identified with the licensee's name and address.
 6. The licensee shall present each captured Harris hawk, Gyrfalcon, or Peregrine falcon to the Department within

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5 calendar days after capture. The licensee shall present each captured raptor captured of any other species to the Department within 14 calendar days after capture. A Department representative shall attach a numbered band to one leg of the lawfully obtained raptor. This band shall not be removed except by an authorized official of the Department, or except as provided in this rule. Licensees shall not alter, counterfeit, or deface a band but may remove the rear tab on the band and may smooth any imperfect surface provided the integrity of the band and numbering are not affected.

- K. Licensees may use raptors for educational display.
- L. Licensees may retain and exchange feathers that are molted or those feathers from raptors held in captivity that die only for purposes of repairing or replacing a broken feather with a feather.
- M. If any raptor used in falconry incidentally kills any species of wildlife for which there is no open season or for which the season is closed, the licensee shall not take the dead wildlife into possession. The licensee shall leave the wildlife where it lies, but may allow the raptor making the kill to feed on the dead wildlife before leaving the site.
- N. Licensees may transfer raptors taken from the wild in Arizona to an Arizona resident's federal raptor propagation license, with the concurrence of the U.S. Fish and Wildlife Service.
- O. A licensee shall not transfer a raptor taken from the wild in Arizona to another falconer licensed outside of Arizona, or export the raptor from the state, without written authorization from the Department. The Department shall not authorize exportation transactions involving more than 2 raptors taken from the wild in Arizona, singly or in combination, per licensee in any calendar year. The Department shall deny any request for authorization of exportation when the number or species which have been or are being exported is not in the best interest of raptor management.
- P. A licensee may place a raptor or raptors in the care of another licensee for a period not to exceed 30 days, providing that the licensee gives written authorization to the other licensee for temporary care, providing that the licensee gives written authorization to the other licensee for temporary care. If the period of care will exceed 30 days, the licensee shall submit

the following written information to the Department within 3 days of the transfer.

- 1. The location of the raptor or raptors,
 - 2. The name of the licensee caring for the raptor or raptors,
 - 3. Approximate number of days the raptor or raptors will be in the care of the other licensee.
- Q. A licensee may do 1 of the following when in possession of a raptor no longer used in the practice of falconry:
 - 1. Release the raptor to the wild into suitable habitat, provided that the raptor was taken from the wild in Arizona, and that all jesses, markers, or other equipment are removed, and that any federal marker is removed and returned to the Department within 10 days of release.
 - 2. Give the raptor to another licensed falconer, except as provided in subsection (O).
 - 3. Transfer the raptor to the Department.
 - 4. Sell or trade the raptor, if it is a lawfully possessed captive bred raptor marked with a seamless leg band.
 - R. Licensees changing residence to another jurisdiction may export their lawfully possessed raptors.
 - S. A licensee shall transfer the carcass of a raptor which has died to a Department office, or destroy the carcass after receiving authorization for destruction of the carcass from the Department. The licensee shall remove any federal markers prior to destroying the carcass and return the markers to the Department.
 - T. A licensee shall report the escape of a raptor to the Department within 5 days. Any licensed falconer may recapture an escaped banded raptor at any time and shall notify the Department within 5 calendar days of the capture.
 - U. Within 5 calendar days of acquisition of any raptor by any method, or disposition of any raptor by any method, a falconer licensee shall submit to the Department a copy of a U.S. Fish and Wildlife Service Migratory Bird Acquisition and Disposition Report, Form 3-186A, dated June 30, 1991, not including any later revisions, which is incorporated by reference. The form shall be completed and signed by the licensee in accordance with the instructions on the form. A copy of the incorporated form is on file with the Secretary of State and available from the U.S. Fish and Wildlife Service Regional Law Enforcement Office, Albuquerque, New Mexico, 87103.
 - V. Falconer licensees are subject to the provisions of R12-4-409.